

Translation

PATENT COOPERATION TREATY

530591
PCT/DE2003/003407



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference PC 8540/DE 8373	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/DE2003/003407	International filing date (day/month/year) 09 October 2003 (09.10.2003)	Priority date (day/month/year) 10 October 2002 (10.10.2002)
International Patent Classification (IPC) or national classification and IPC E02D 17/20		
Applicant HAUKE, Oskar		

<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.</p> <p><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of <u>2</u> sheets.</p>	
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the report</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>	

CORRECTED
VERSION

Date of submission of the demand 06 May 2004 (06.05.2004)	Date of completion of this report 15 February 2005 (15.02.2005)
Name and mailing address of the IPEA/EP Facsimile No.	Authorized officer Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/DE2003/003407

I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
pages 1-7, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☒ the claims:
pages _____, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages 1-14, filed with the letter of 30 October 2004 (30.10.2004)
- ☐ the drawings:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/DE 03/03407

I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

The amendments to the set of claims which were submitted on 29 October 2004 meet the requirements of PCT Article 34(2)(b).

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/DE 03/03407

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	7-11	YES
	Claims	1-3, 5, 6, 12, 13	NO
Inventive step (IS)	Claims	7-11	YES
	Claims	4, 14	NO
Industrial applicability (IA)	Claims	1-14	YES
	Claims		NO

2. Citations and explanations

1. Reference is made to the following documents:

D2: GB 370 878 A (FERNAND NISOT; GUY PIERARD;
JOSEPH CRABBE) 14 April 1932

D3: DATABASE WPI Section Ch, Week 198705 Derwent
Publications Ltd., London, GB; Class L02,
AN 1987-033939, XP002271412 & JP 61 291441 A
(MATSUSHITA ELECTRIC WORKS LTD) 22 December 1986

D4: RO 113 460 B (CERNAU A.; COR D.; RUS S.)
30 July 1998

2. Even taking account of the applicant's arguments in the letters of 29 October 2004 and 1 February 2005, the present application fails to meet the requirements of PCT Article 33(1) since the subject matter of claims 1 to 3, 5, 6 and 12 and 13 is not novel within the meaning of PCT Article 33(2).

2.1 D2 discloses (cf. the search report; the references in brackets are to D2):

A method in which powdered material is rendered water-repellent (page 1, lines 15 to 20, and page 2, lines 72 to 80), building materials such as sand and

limestone being specifically mentioned as powdered material (page 1, lines 70 to 79), sand existing naturally as bulk material. Therefore, in light of D2, the subject matter of independent claims 1 and 13 cannot be considered novel. Furthermore, D2 makes explicit reference to concrete parts (page 2, lines 78 to 80) which can be produced using the waterproofed components and can then also be considered prejudicial to the novelty of the construction as per claim 12. The waterproofing agents proposed in D2 (page 1, lines 80 to 87) and the limestone are, moreover, covered by the scope of dependent claims 3, 5 and 6, which therefore likewise cannot be considered novel.

In the letter of 1 February 2005, the applicant refers to the fact that product claim 1 is a "purpose-oriented" claim, i.e. restrictive for the use for erecting or renovating water-repelling constructions, and that therefore the disclosures in documents D2 to D4 cannot be considered prejudicial to the novelty of the subject matter of claim 1. On the contrary, this is the case only when the claimed product is in a form suitable solely for the particular application (see PCT Guidelines paragraph 5.21), which is not the case here, since waterproofed bulk materials such as sand and aggregates are suitable for mortar or concrete (see D2, *inter alia*). The intended restriction as "use of ... for ..." is covered by claim 7 in this instance (see point 4 below).

- 2.2 D3 and D4 both disclose the waterproofing of aggregates such as calcium carbonate with calcium stearate, which are therefore likewise to be

considered prejudicial to the novelty of the subject matter of claims 1, 2 and 13.

3. Dependent claims 4 and 14 do not contain any features which, combined with the features of any claim to which they refer, meet the PCT novelty and inventive step requirements. The reasons for this are as follows:

The features in dependent claims 4 and 14 are in each case only one of several obvious possibilities from which a person skilled in the art would choose according to the circumstances to solve the problem of interest, without thereby being inventive.

4. The combination of features in claim 7 is neither disclosed nor suggested by the available prior art. The reasons for this are as follows:

Although materials such as sand or powdered mineral waterproofed with stearates or oils are known *per se* (see D2 to D4), none of the prior art documents discloses the use of these materials in the form of packaged bulk material, i.e. used in the free state, for erecting water-repellent and water-retaining constructions such as dykes.

Claims 8 to 11 are dependent on claim 7 and hence likewise meet the PCT novelty and inventive step requirements.